



Littler Mendelson, P.C.
2001 Ross Avenue
Suite 1500, Lock Box 116
Dallas, TX 75201.2931

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Arthur Tracy Carter
214.880.8105 direct
214.880.8100 main
214.594.8601 fax
atcarter@littler.com

VIA FEDEX OVERNIGHT

Mark J. Langer, Esquire
Clerk, United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue NW, Room 5423
Washington, DC 20001-2866

Re: *Volkswagen Group of America, Inc. v. NLRB*,
Nos. 16-1309, 16-1353

Dear Mr. Langer:

Pursuant to FRAP 28(j), Volkswagen Group of America, Inc. (“Volkswagen”) hereby notifies the Court that in *PCC Structural, Inc.*, 365 NLRB No. 160, slip op. (December 15, 2017) the NLRB overruled *Specialty Healthcare*, 357 NLRB 934 (2011), the decision relied on by the NLRB to approve the maintenance employee unit in this case. (See Doc. # 1674339, JA at 604, 620-621, 685).

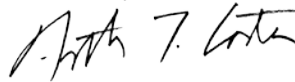
In overruling *Specialty*, and consistent with what Volkswagen has argued, (see, e.g., Doc. # 1657783 at 26-39, 55-59) the NLRB ruled that the traditional community of interest standards, rather than the *Specialty Healthcare* version of such standards, should be applied to unit questions. It further ruled that where there are issues over whether employees excluded from a unit should be included, the proper standard is not “overwhelming community of interests” as was applied in Volkswagen, but instead whether the included employees are sufficiently distinct from the excluded employees to warrant a separate unit. *PCC Structural*, 365 NLRB No. 160, slip op. at 5, 7. In short, *PCC* reaches the conclusions that Volkswagen has urged this Court to reach.

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Further on facts similar to those in Volkswagen, the *PCC* Board granted review and remanded the matter to the Regional Director. Like in Volkswagen the Regional Director had not applied the traditional community of interest standards, and had applied the overwhelming community of interest standard instead of the sufficiently distinct standard concerning the exclusion of employees from the unit. *PCC Structurals*, 365 NLRB No. 160, slip op. at 1-3.

Where there has been an intervening change of law by an agency during the pendency of an appeal, as happened here, the Court should remand the matter “to ...the agency to decide... whether giving the change retrospective effect will best effectuate the policies underlying the agency’s governing act.” *NLRB v. Food Store Employees Union*, 417 U.S. 1, 10 & n.10 (1974).

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur T. Carter", written in a cursive style.

Arthur T. Carter